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Decision 03-09-017 September 4, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan. (U 39 E)	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

OPINION REGARDING UNDER-REMITTANCES

I. Summary

On March 6, 2003, the California Department of Water Resources (DWR) transmitted a Memorandum to Commissioners Brown and Lynch requesting that the Commission "take any necessary steps to ensure the Department receives appropriate remittances from all energy delivered to retail customers in PG&E's service territory." (Memorandum, p. 1.)[1] DWR asserts that it is not recovering its revenue requirement for all of the energy delivered to retail customers in Pacific

[1] Unless otherwise indicated, the term "Memorandum" refers to the March 6, 2003 DWR Memorandum.

Gas and Electric Company's (PG&E) service territory due to PG&E's interpretation of various Commission decisions which PG&E construes to permit the delivery of DWR energy to serve load associated with PG&E's contractual obligation with the Western Area Power Administration (WAPA).

DWR estimates that "PG&E's failure to remit the retail rate for this power, as contemplated in DWR's 2003 revenue requirement determination, amounts to approximately $250 million for 2001 and the first half of 2002 and an estimated $220 - $300 million for the balance of 2002." (Memorandum, p. 1.)[2] If this problem continues, DWR estimates a further under-remittance of $238 million for 2003.[3]

In Decision (D.) 02-05-048, we approved a servicing order for DWR and PG&E. The servicing order was later revised in D.02-12-072. The servicing order sets forth the terms and conditions under which PG&E is to provide transmission and distribution of DWR-purchased electricity, as well as billing, collection and related services. Due to the use of certain phraseology in the servicing order and in the Operating Order, PG&E has interpreted the servicing orders in a manner that allows it to treat DWR-supplied energy as if it were delivered for PG&E to

[2] On August 4, 2003, DWR submitted a memorandum to Commissioners Brown and Lynch in which DWR states that PG&E and DWR have agreed that a preliminary calculation of the outstanding amount owed from PG&E and still unpaid is $469 million for the period of January 19, 2002 through December 31, 2002.

[3] At page 6 of DWR's July 1, 2003 submission entitled "Supplemental Determination of Revenue Requirements For the Period January 1, 2003 Through December 31, 2003" (2003 Supplemental Determination) DWR states that the amount of the under-remittance from "January 17, 2001 through the end of March 2003, is estimated to be at least $539 million."

meet its load obligation with WAPA, while withholding from DWR the power charge[4] payments associated with this energy.

Today's decision clarifies our intent in D.02-05-048 and D.02-12-072 that PG&E should have paid DWR, using the Commission-approved DWR power charge,[5] for all of the energy that DWR supplied to PG&E's service territory and was purportedly used to serve WAPA load obligations. This energy was delivered to serve retail customers. D.02-05-048 and D.02-12-072 are modified accordingly. PG&E is directed to remit to DWR the Commission-approved DWR power charge for all of the energy that DWR supplied to PG&E's service territory which was purportedly used to meet PG&E's WAPA load obligations during the period from January 17, 2001 to the present. The remittance by PG&E to DWR shall be in accordance with the Commission's directive in the decision regarding DWR's supplemental determination of its 2003 revenue requirement. PG&E's shareholders shall also pay interest on the above amount as determined in a future Commission decision.

II. Background

The DWR Memorandum was transmitted to the service lists in Application (A.) 00-11-038 and in Rulemaking 01-10-024 on March 6, 2003. The Memorandum raises concerns that PG&E has failed to remit to DWR the

[4] The term "power charge" is defined in the rate agreement adopted in D.02-02-051.

[5] The term "power charge" is used in Table C of D.02-12-045, which allocated DWR's revenue requirement for 2003. (See D.02-12-045, p. 33, Table C; p. 61, OPs 1, 2, 8.) In D.02-02-052, the decision which allocated DWR's revenue requirements for 2001-2002, a cents per kilowatt-hour charge is used instead of power charge. (See D.02-02-052, pp. 4, 114-115, OPs 3, 4.)

remittances for energy intended to serve retail load but that was purportedly used to serve load associated with PG&E's WAPA contract obligation.

In a March 24, 2003 ruling of the assigned Administrative Law Judge (ALJ), DWR's Memorandum request was treated as a request to modify the servicing orders that were approved in D.02-05-048 and D.02-12-072, and interested parties were provided the opportunity to file a response. The ruling also solicited comments on whether other decisions should be modified, and the possible impact of those modifications on other proceedings.

Responses to DWR's Memorandum were filed by PG&E, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE).[6] DWR submitted a reply to the responses in a DWR Memorandum dated April 17, 2003.

III. Position of the Parties

A. DWR

DWR contends that due to PG&E's interpretation of various Commission decisions concerning the delivery of energy by DWR, PG&E is under-remitting the monies owed to DWR for energy. The amounts owed by PG&E correlate with energy deliveries associated with PG&E's wholesale contract obligation to WAPA. DWR asserts that PG&E has interpreted D.02-05-048 in a manner that allows for the allocation of DWR power based on "total demand," including PG&E's wholesale WAPA load obligations.[7]

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[6] SCE also mailed letters to Commissioners Brown and Lynch on March 14, 2003, and to President Peevey on April 7, 2003 regarding the under-remittance issue.

[7] DWR believes that D.02-05-048 is contrary to applicable law and prior decisions because D.02-05-048 states that "WAPA customers are being served with DWR power,"

Footnote continued on next page

However, PG&E is only remitting payments to DWR for the portion of DWR power that PG&E has deemed to have served retail load.

According to DWR, this under-remittance problem has arisen because:

> "remittances by PG&E to DWR are based on a formula with definitions that, as applied by PG&E, do not compensate DWR for the energy delivered by PG&E to serve WAPA, even though PG&E interprets other Commission orders to require the use of DWR energy to serve WAPA." (Memorandum, p. 6.)

DWR points out that in D.02-12-069, the decision which adopted the operating order for PG&E, the WAPA load was excluded from the definition of "utility supply." The definition of utility supply is used to calculate the respective DWR and PG&E percentages of load for remitting revenues from the sale of surplus energy to DWR. "Utility supply" is also used in the formula for determining the energy payments to DWR for the sale of DWR energy to the utility's retail customers. The operating order also provides that if there is a conflict between the formulas and procedures in the operating order and those in the servicing order, the provisions in the servicing order are to govern.

DWR contends that due to the use of the phrase "total demand" in the servicing order decisions (D.02-05-048 and D.02-12-072), instead of "total retail demand," PG&E has interpreted D.02-05-048, D.02-12-072 and D.02-12-069 "in a manner that does not require remittances for DWR energy purportedly used to

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while applicable law and prior Commission decisions have determined that DWR's energy deliveries are made to retail end-use customers.

serve WAPA load." (Memorandum, p. 7.)[8] That is, PG&E's interpretation allows "for the allocation of DWR power based on 'total demand,' which includes WAPA load obligations, but only remit payments to DWR for the portion of DWR power deemed by PG&E to have served retail load." (Memorandum, p. 4.)

DWR notes that on December 20, 2002, PG&E filed an expedited motion seeking approval of an operating agreement with DWR. Under that proposed operating agreement, PG&E and DWR agreed to treat the WAPA load as a wholesale obligation, and that PG&E's WAPA obligations would not be included in the load served by the DWR energy delivered to PG&E's service territory. On February 24, 2003, a draft decision in R.01-10-024 regarding PG&E's motion for the approval of an operating agreement with DWR, was issued.[9] DWR asserts, however, that the draft decision "does not clearly and unambiguously resolve the issue of whether WAPA load is served by DWR supplied power or URG [utility retained generation]." (Memorandum, p. 7.)

As a result of the past and probable future under-remittances for energy deliveries made by DWR to PG&E's service territory, DWR contends that the following adverse consequences will result:

> "First, retail ratepayers in all three investor owned utility ('IOU') service territories are currently shouldering the costs of DWR power purportedly used to serve PG&E's WAPA

[8] DWR notes "that under PG&E's contract with WAPA, PG&E receives payments for energy deliveries to WAPA based on PG&E's average cost of thermal energy production." (Memorandum, p. 1, fn. 1.) However, DWR's view is that its power should be treated as having been delivered to PG&E's retail customers, and not to WAPA. As a result, DWR should be paid by PG&E at the retail rate for this power.

[9] The February 24, 2003 draft decision was subsequently adopted by the Commission on April 3, 2003 as D.03-04-029.

> contract obligations for the period of time up to the issuance of the Department's bonds, because that under-remittance was in effect funded by the issuance of additional bonds. Unless the Commission acts to correct this under-remittance issue, this subsidization will continue, because these under-remittances are made up by bond charge payments from ratepayers located in all three IOU service territories. Second, since the issuance of bonds and for the future, under-remittances will result in the Department drawing down its operating reserves. Unless the cost of replenishing those reserves is allocated by the Commission to PG&E's service territory, the costs would be spread among ratepayers in the three IOU service territories. … Finally, the Department is concerned that PG&E's interpretation and construction of various CPUC orders is contrary to legislation establishing the Department's power purchase program." (Memorandum, p. 2.)

The responses of SDG&E and SCE confirm DWR's concerns that the under-remittances will have a financial impact on all California ratepayers because their customers will have to shoulder the costs associated with using DWR energy to serve PG&E's WAPA obligations. Contrary to PG&E's assertion that DWR did not finance the under-remittance associated with PG&E's wholesale obligations for 2001 and 2002, DWR states that:

> "The under-remittance associated with energy deliveries to PG&E's service territory in 2001 and 2002 (up to the date of bond issuance) were effectively financed by the Department." (April 17, 2003 Memorandum, p. 2.)

DWR requests that the Commission take the necessary steps to ensure that DWR receives "appropriate remittances from all energy delivered to retail customers in PG&E's service territory." (Memorandum, p. 1.) DWR seeks an order from the Commission requiring PG&E to remit the prior under-remittances to DWR as soon as possible. DWR requests that the Commission should also

make clear that the DWR energy delivered to PG&E's service territory has been used to serve retail load.

PG&E does not dispute that it has failed to remit power charges to DWR for this energy. PG&E claims to have used DWR energy to serve wholesale obligations and, appears unwilling to pay the prior under-remittances to DWR.[10] Instead, PG&E seeks to have the past under-remittances considered "in the context of allocating any supplemental revenue requirement for 2003 or in any allocation adjustments to DWR's 2001-2003 revenue requirement true up." (April 17, 2003 Memorandum, p. 2.) DWR states in footnote 7 of its April 17, 2003 Memorandum that "PG&E appears to be seeking a forum to argue that no adverse consequences have resulted from under remittances to DWR in order to postpone an order requiring an immediate lump sum payment to DWR for past under remittances." DWR contends that PG&E's argument that DWR has overcharged ratepayers with respect to the operating reserve are misplaced, lack credibility, and should be submitted in a DWR administrative proceeding rather than in the 2003 supplemental determination of the revenue requirement.

According to DWR, PG&E appears willing to resolve the under-remittance problem on a prospective basis by serving its wholesale obligations, such as WAPA, exclusively from URG. The attachment to DWR's April 17, 2003 Memorandum recommends specific language modifications to D.02-12-069, D.02-05-048 and D.02-12-072. DWR contends that if these proposed language modifications are adopted, this will ensure that DWR receives the appropriate

[10] PG&E's response acknowledges that it has been accruing the monies in the event the Commission determines that PG&E owes DWR for energy used to serve wholesale obligations in prior periods.

remittances for energy deliveries to PG&E's service territory on a prospective basis. DWR also suggests that unless the Commission orders PG&E to serve the WAPA load from its URG portfolio, PG&E will not adjust its utility supply to account for this load.

B. PG&E

PG&E states that according to DWR, the WAPA shortfall occurred because "when the Commission set PG&E's remittance rate for the 2001-2002 and 2003 DWR power charge revenue requirements, it did not reflect the Commission's adopted approach for incorporating the WAPA load into the remittance calculation." (PG&E Response, p. 2.) As a result, DWR is receiving less than what was assumed in the revenue requirement decision.

PG&E asserts "that it is and has been obligated to implement the remittance formula adopted by the Commission in the servicing order as it pertains to WAPA, and has done so consistent with the Commission's directions." (PG&E Response, p. 3.) PG&E recognized the need for clarity on the WAPA issue, and brought this to the Commission's attention in the proposed operating agreement that PG&E submitted in its motion of December 20, 2002, and in its comments to the February 24, 2003 draft decision regarding the operating agreement. PG&E points out that if Exhibit C of the operating agreement adopts the treatment of WAPA as proposed by DWR in its March 6, 2003 Memorandum, the Commission will also need to make conforming modifications in the servicing order.

PG&E does not oppose making a prospective change to DWR's current remittance methodology that is in the servicing orders, to an "approach that ensures that PG&E remits at a rate that compensates DWR for the amount of DWR's forecast 2003 revenue requirement allocated to PG&E's customers."

(PG&E Response, p. 3.) PG&E contends that such a change would resolve DWR's concerns regarding current cash collections on a prospective basis, and would eliminate DWR's need for maintaining a WAPA reserve in its 2003 revenue requirement.

If the Commission decides to revise the remittance methodology, PG&E recommends that any adjustments to the amounts that PG&E remitted since the beginning of January 1, 2003, be considered during the supplemental DWR 2003 revenue requirement. This will allow the Commission to consider and adjust both the undercollections and overcollections. PG&E contends that DWR has continued to charge over $1 billion in operating reserves to all customers, which may no longer be needed since the utilities are now procuring power for the residual net short.

PG&E states that in informal conversations with the utilities and Commission staff, DWR has taken the position that an additional WAPA reserve of over $200 million might be required unless PG&E's remittance calculations are changed to incorporate DWR's preferred method of reflecting the WAPA loads in the remittance calculations. PG&E contends that this additional WAPA reserve is not required, and that the bond documents and the rate agreement provide that DWR's overall revenue requirement is to be adjusted on a prospective basis to compensate for the undercollection or shortfall. PG&E requests that DWR file its supplemental 2003 revenue requirement so that the undercollections and overcollections, including the WAPA issue, can be reviewed by the Commission and all interested parties.

With respect to any adjustments to the remittances made by PG&E to DWR during the 2001-2002 time period, PG&E contends that these should only be considered in the context of all potential adjustments and true-ups to DWR's

2001-2002 revenue requirement.[11] To the extent that DWR's overall collections from the utilities for this time period have been excessive, PG&E believes the revenue requirement should be adjusted downwards as required by the 2001-2002 DWR revenue requirement decision.

PG&E acknowledges in its response that it "has been accruing for financial reporting purposes the additional charges attributable to the potential higher DWR remittance rate because of the risk that the Commission may at some point decide to change the remittance rate in DWR's favor." (PG&E Response, p. 3.)[12]

C. SDG&E

As a result of the undercollection caused by PG&E's under-remittance, DWR has issued additional bonds. SDG&E contends that the retail customers of SDG&E and SCE will end up financing the undercollection because these additional bonds are paid for by the bond charge payments of each utility's customers. SDG&E does not believe that its retail customers should have to bear the cost of the DWR energy used to serve PG&E's WAPA load.

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[11] PG&E states that DWR's bond charges have been excessive, and that there is no support for DWR's contention that the bond charges may have been excessive due to the alleged WAPA-related undercollections. (PG&E Response, p. 4.)

[12] SCE notes in footnote 4 of its April 7, 2003 letter to President Peevey that PG&E's 2002 Annual Report states in pertinent part: "In December 2002, the CPUC approved an operating order requiring the Utility to perform the operational, dispatch, and administrative functions for the DWR's allocated contracts beginning on January 1, 2003. The operating order, which applies prospectively, includes the DWR's proposed method of calculating the amount of revenues that the Utility must pass-through to the DWR. As a result, as of December 31, 2002, the Utility has accrued an additional $369 million (pre-tax) liability for pass-through revenues for electricity provided by the DWR to the Utility's customers."

SDG&E recommends that the Commission immediately address the PG&E under-remittances. SDG&E states that "PG&E should pay now for the WAPA load in 2001-2002 at the DWR rate that the CPUC authorized for PG&E," instead of waiting for the 2001-2002 true-up.[13] SDG&E asserts there is no reason why PG&E should continue to hold nearly $500 million any longer. If PG&E is allowed to continue withholding payment to DWR, SDG&E asserts that this could affect the size of the reserves that the rating agencies will require DWR to have in order to maintain an "A" bond rating. SDG&E contends that a higher reserve level would unfairly increase costs for customers across the state.

SDG&E also supports DWR's proposal that PG&E be required to serve its WAPA load with PG&E's URG. If this is done on a prospective basis, DWR should not increase its 2003 revenue requirement operating reserve level in expectation of the WAPA under-remittance.

D. SCE

SCE contends that unless the Commission acts on DWR's request, PG&E will continue its current under-remittance practices. If this is allowed to continue, the customers of SCE and SDG&E could end up having to pay "for a large amount of, if not the majority of the resulting shortfall in DWR's 2001-2002 and 2003 revenue requirements: a shortfall amount that DWR estimates will approach $800 million." (SCE Response, p. 4.)

SCE agrees with DWR's recommendation that the Commission issue a ruling directing PG&E to treat its wholesale load obligations in a manner consistent with what the Commission requires of the other utilities, and that

[13] If the WAPA under-remittances are paid, SDG&E states that the timing of the true-up will not be as critical.

PG&E be directed "to immediately remit payment to DWR for all DWR energy used to serve PG&E's WAPA obligations…." (SCE Response, p. 5.) SCE believes that PG&E has set aside the funds to pay DWR for the energy that was delivered to WAPA, and references PG&E's 2002 Annual Report in support of this belief. (See footnote 12.)

SCE contends that PG&E's payment of the under-remittances will allow DWR to remove the associated contingency that DWR reserved in its operating account for the WAPA load. Removal of this contingency will allow DWR to file its supplemental 2003 revenue requirement determination, to true-up its 2001-2002 revenue requirement, and to allocate all of the costs attributable to the under-remittances to PG&E.

In order for the Commission to equitably resolve the under-remittance dispute between DWR and PG&E, SCE believes that the Commission must address the following six issues.

The first issue is whether PG&E has valid grounds for serving its wholesale obligations differently than the other utilities, i.e., using DWR energy instead of URG. SCE contends there are no valid grounds. SCE points out that D.02-12-069 requires that the WAPA load be served out of URG, which is consistent with how the other utilities use URG to serve existing wholesale load obligations. Fairness and equity require that all utilities' preexisting sales or exchange contracts be treated consistently to avoid unfair cost-shifting among the utilities' customers. SCE further asserts that consistent treatment is needed so "that the utilities can uniformly apply a pro rata sales formula to surplus sales from a portfolio of URG and DWR allocated contracts as required under D.02-09-053." (SCE Response, pp. 6, 10.)

If the Commission determines that PG&E should be allowed to use DWR energy to serve its WAPA obligation, the second issue is whether PG&E can lawfully use DWR energy to serve its wholesale WAPA load under AB1X (Chapter 4 of the Statutes of 2001-02 First Extraordinary Session). SCE asserts that because WAPA is not a retail end-use customer, Water Code §§ 80002.5 and 80116 prevent PG&E from using DWR energy to serve its WAPA obligation. The Commission should therefore issue a ruling preventing a utility from using DWR energy to serve non-retail load, and all wholesale load obligations should be served exclusively from URG. As for PG&E's prior usage of DWR energy to meet its WAPA obligation, SCE recommends that the Commission order PG&E to remit payment to DWR for all of the DWR energy that PG&E has not previously reimbursed DWR for, and that this payment occur within 15 days of the effective date of such a decision.

The third issue is whether PG&E should be required to timely remit payment to DWR for all energy deliveries by DWR to PG&E as of the date of this decision. SCE's understanding is that PG&E "calculates its retail remittances to DWR as if WAPA load were served in part by DWR supply at a retail rate of zero." (SCE Response, p. 10.) By using the ambiguities in Commission decisions to treat the WAPA load in this manner "reduces DWR's share of PG&E's actual retail revenues and results in a revenue shortfall for DWR that might well be paid, depending upon final true-up determinations, in large part by the customers of other investor-owned electric utilities." (SCE Response, p. 10.) Such a result is unfair to the customers of the other utilities. SCE also contends that PG&E's suggestion to serve its WAPA load from URG on a going-forward basis will unfairly shift the financial responsibility for payment of PG&E's prior under-remittances to the customers of SCE and SDG&E.

The fourth issue is the remittance rate PG&E should pay to DWR for the energy deliveries that PG&E used to serve its WAPA load. SCE contends that PG&E must pay the entire Commission-approved PG&E remittance rate for all DWR energy. DWR's 2001-2002 and 2003 revenue requirements "each assumed that DWR would be reimbursed on the same basis that each utility's remittance rate was calculated on, namely, each utility's approved remittance rate and actual sales." (SCE Response, p. 7.) If PG&E is allowed to apply its approved remittance rate only to a subset of the DWR energy deliveries to PG&E, DWR will undercollect its revenue requirement. SCE also points out that PG&E's notion that it "can receive free energy from DWR to serve its WAPA load is ridiculous at its core." (SCE Response, p. 11.)

The fifth issue is whether prior Commission decisions should be modified so as to consistently require the utilities to use URG to serve their wholesale contractual obligations. SCE proposes that the Commission modify D.02-05-048, D.12-02-072 and D.02-12-069, and that the Commission review D.03-04-029 for possible inconsistencies.

The sixth issue the Commission must address is the impact on other issues and proceedings resulting from a requirement that the utilities use URG to serve wholesale contractual obligations. SCE contends that requiring PG&E to use its URG to serve wholesale load obligations will impact the true-up of DWR's 2001-2002 revenue requirement. To avoid unjustified cost-shifting in that true-up proceeding, the parties and the Commission will need to determine and allocate all incidental costs attributable to PG&E's under-remittance to PG&E.[14]

[14] SCE contends that one example of such an incidental cost are "the financing charges that DWR was forced to incur as a result of PG&E's under-remittance of revenues to

Footnote continued on next page

IV. Discussion

A. Introduction

The underlying issue in this dispute is whether DWR is receiving all of the monies to which it is entitled for supplying DWR energy in PG&E's service territory. DWR supplied energy to PG&E's retail customers. As a result of certain perceived ambiguities in the servicing order and operating order decisions for PG&E, which are discussed below, PG&E has been able to meet its WAPA load obligation, while avoiding remittances to DWR for the energy delivered to serve PG&E's retail customers. PG&E does not dispute that it has withheld these remittances.

In order to resolve this issue, we need to examine DWR's revenue requirements, what Commission decisions led PG&E to under-remit, what the Commission should do to resolve the under-remittance problem, and whether any decisions should be modified.

B. The Effect On DWR's Revenue Requirement

According to DWR's Memorandum, PG&E has failed to remit the retail rate for the DWR energy purportedly used to fulfill PG&E's WAPA load obligation. DWR estimates the under-remittances for 2001 and the first half of

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DWR in the true-up of DWR's 2001-2002 revenue requirement." (SCE Response, p. 4, fn. 6.)

2002 at $250 million, and for the second half of 2002 at $220 to $300 million.[15] If this continues, DWR estimates an under-remittance of $238 million for 2003.[16]

DWR's revenue requirement for 2001 and 2002 was adopted in D.02-02-052,[17] and DWR's revenue requirement for 2003 was adopted in D.02-12-045. The revenue requirements were based in part on projected sales of energy delivered to retail customers in California, and were allocated among the three electric utilities. (See D.02-02-052, pp. 12, 110, 115-116, COL 3 and 6, OP 7; D.02-12-045, pp. 33, 52.) As a result of PG&E's under-remittances, DWR's anticipated revenue requirements for 2001-2002 and 2003 have not been met. Unless the Commission takes action on the under-remittances, this will result in an undercollection of DWR's revenue requirements, and the possible shifting of costs to customers of SDG&E and SCE.

Although SDG&E contends that PG&E's under-remittances may lead to an increase in the amount of DWR's operating reserves in order to maintain the "A" bond rating of the DWR bonds, it does not appear that this will occur in the near term. Based on DWR's 2003 Supplemental Determination, DWR expects a reduction in its operating reserve account of $147 million. (2003 Supplemental Determination, pp. 6, 21.)

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[15] As mentioned in footnote 2, PG&E and DWR have agreed that a preliminary calculation of the outstanding amount owed from PG&E and still unpaid is $469 million for the period of January 19, 2002 through December 31, 2002.

[16] As mentioned in footnote 3, DWR estimates that as of March 2003, the under-remittance is at least $539 million. PG&E's 10-Q filing of May 13, 2003 shows that as of March 31, 2003, PG&E has accrued a $539 million (pre-tax) liability for pass-through revenues to DWR.

[17] D.02-02-052 was modified by D.02-03-062 and clarified by D.02-09-045.

The undercollection of DWR's revenue requirements and the shifting of costs to other customers, are not desirable outcomes. If the under-remittances are not paid by PG&E, we would not be fulfilling our statutory duty of ensuring that DWR recovers its revenue requirement under Water Code § 80110,[18] so that DWR can satisfy the requirements of Water Code § 80134.[19] In addition, if the under-remittances are not recovered from PG&E, the customers of SDG&E and SCE could end up paying for some or all of the energy used to fulfill PG&E's WAPA obligation.

DWR's estimate of PG&E's under-remittance for 2001 and 2002 is in the neighborhood of $470 million. PG&E does not dispute that it did not remit these monies to DWR because it associated these monies with energy deliveries to meet its load obligation with WAPA. As pointed out by SCE, and acknowledged by PG&E, PG&E recognized in its 2002 annual report that it "has accrued an additional $369 million (pre-tax) liability for pass-through revenues for electricity provided by the DWR to the Utility's customers." (PG&E 2002 Annual Report, p. 104.) As mentioned earlier, a similar situation exists with respect to DWR's 2003 revenue requirement. As a result, PG&E has been able to fulfill its WAPA load obligation, while at the same time, enjoying the benefit of not remitting all the monies that DWR demanded for energy delivered to PG&E's retail

[18] Water Code § 80110 provides in part that DWR shall be entitled to recover its revenue requirement in the "… amounts and at the times necessary to enable it to comply with Section 80134…."

[19] Water Code § 80134 provides that DWR shall establish and revise its revenue requirement at least annually so that it has sufficient funds to pay for all of the costs associated with DWR's bonds, the energy purchases, and other related costs.

customers. Such a result is contrary to what we intended when we allocated DWR's revenue requirements to the three electric utilities.

C. Decisions and Statutes

The next step is to examine the various decisions which have led PG&E to withhold remittances to DWR that are associated with energy used to fulfill PG&E's WAPA load obligation, and the statutory provisions which apply to energy supplied by DWR.

Various Water Code sections enacted by AB1X provide that DWR's energy is to be provided to retail end use customers. (See Water Code §§ 80104, 80110, 80116.)[20] In D.01-03-081, the decision which implemented AB1X, the Commission determined that when the utilities' retail end-use customers take delivery of the energy supplied by DWR, those customers are deemed to have purchased the energy from DWR. In addition, the decision ordered PG&E and the other two electric utilities to segregate and hold in trust (pending the transfer to DWR) for the benefit of DWR, all monies they receive pursuant to Water Code § 80106.[21]

In D.02-05-048, the Commission approved a servicing order for PG&E and DWR, and ordered PG&E to comply with all of the terms and conditions of the servicing order.[22] In Section 3 of Attachment B of the servicing order, the

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[20] Water Code § 80116 provides for the sale of DWR energy to a local publicly owned utility so long as that utility is not a net seller of power.

[21] Among other things, Water Code § 80106 permits DWR to contract with the electric utility to bill customers for the energy supplied by DWR.

[22] A redline version of the approved servicing order was attached to D.02-05-048 as Appendix B, and a "clean" copy of the servicing order was attached to that decision as Appendix C.

Commission used the term "total demand," instead of "total retail demand." PG&E had expressed concern that the use of "total retail demand" would increase the remittances to DWR, and would exclude the WAPA load. The difference between the two terms was discussed in D.02-05-048 at pages 11 and 12 of the decision, wherein we stated:

> "Although the wording is different, the concept of 'total retail demand' is identical to 'total bundled service energy provided to Customers.' That said, we observe that as a policy matter, we have consistently articulated at the Federal Energy Regulatory Commission (FERC) and elsewhere that retained generation is to serve PG&E's native load customers, i.e., customers that are not served by the WAPA. As far as we are concerned, and to avoid any uncertainty, we state that WAPA customers are being served with DWR power, and should be included in the denominator used to establish the DWR Percentage. WAPA load should also be reflected in the numerator used to establish the amount of DWR power. Those changes have been made to section 3 of Attachment B."

As a result of the use of "total demand" in the servicing order, load associated with PG&E's WAPA contract obligations was included in the forecast of PG&E's retail end-use customer usage. DWR supplied the energy to serve retail customers in PG&E's service territory. We intended PG&E to remit to DWR the Commission-approved DWR power charge for this energy. We realize that DWR energy was delivered for retail customer use, and that AB1X prohibited PG&E from using DWR energy to serve WAPA load. For this reason, we clarify D.02-05-048 to state that WAPA customers are not being served with DWR energy.

In D.02-12-069, the decision approving an operating order for DWR and PG&E, the term "utility supply" is used to calculate the amount owed to DWR

for surplus energy sales. The term is also used to determine the "energy payment" that is to be remitted to DWR for energy delivered to retail customers.[23] "Utility supply" is defined as:

> "total energy dispatched from URG, new Utility contracts and Utility market purchases with adjustments for Ancillary Services and ISO Instructed Energy, exchange transactions, negative load deviations and supply deviations as described below, and with deductions for existing energy sales transactions and utility pump-back load as of the date of this Operating Order, PG&E's WAPA load, and transmission losses." (Settlement Principles, p. C-4.)

The Settlement Principles also state at page C-7: "In the Event of any conflict between the formulas and procedures in this Exhibit C and the formulas and procedures in Utility's Servicing Arrangement, those contained in Utility's Servicing Arrangement shall govern."

In D.02-12-072, a revised servicing order for PG&E and DWR was adopted. Many of the revisions were due to the issuance of D.02-09-053, the decision which allocated the DWR contracts to the three utilities. One of the revisions that DWR had sought was to use the term "total retail demand" instead of "total demand." We stated in D.02-09-053 that DWR had previously raised this issue in the process leading up to D.02-05-048, and that we would use the phrase "total demand" instead of "total retail demand."

[23] Both of these terms appear in Exhibit C ("Settlement Principles For Remittances and Surplus Revenues," referred to as "Settlement Principles") of the operating order and operating agreement. The operating order is attached to D.02-12-069 as Attachment A, and the operating agreement is attached to D.03-04-029 as Attachment AA.

Due to the conflict between the formulas in Section 3 of Attachment B of the servicing order and the Settlement Principles of the operating order, PG&E interpreted the clause at page C-7 of the Settlement Principles to mean that the remittance formula in the servicing order should govern. Under the remittance formula of the servicing order, the WAPA load is not included because PG&E views it as a non-retail load. As a result of this interpretation, PG&E has withheld from DWR the remittances attributable to the energy used to meet PG&E's WAPA load obligations.

In D.03-04-029, we approved the operating agreement between PG&E and DWR. As part of the change to the section entitled "Utility Remittance to DWR" in the Settlement Principles of the operating agreement, PG&E is to "remit to DWR an Energy Payment for the delivery of Contract energy to Utility retail customer (including the delivery o[f] Contract energy to WAPA) and a separate payment for DWR's share of Surplus Energy Sales Revenues." (D.03-04-029, Settlement Principles, p. 2.)

The Settlement Principles also altered the paragraph defining "utility supply" to read as follows:

> "Utility Supply is total energy dispatched from URG, new Utility contracts and Utility market purchases with adjustments for transmission losses, existing wholesale obligations, WAPA load, Ancillary Services and ISO Instructed Energy, exchange transactions, and ISO Uninstructed Energy as described below." (Settlement Principles, p. 4.)

In its April 17, 2003 Memorandum, DWR recommends various language modifications to PG&E's servicing orders in D.02-05-048 and D.02-12-072, and to the operating order in D.02-12-069. SCE also recommends some language modifications to D.02-05-048, D.02-12-072, and to D.02-12-069,

and recommends that D.03-04-029 be reviewed to "ensure that nothing in this decision can be construed as inconsistent with the requirement that all wholesale load be served by URG." (SCE Comments, p. 9.)

D. Resolution Of the Under-remittance Problem

D.03-04-029 addresses the under-remittance problem on a going-forward basis. However, this under-remittance problem still exists with respect to the DWR energy delivered prior to the adoption of D.03-04-029.

One method of resolving this under-remittance problem is to order PG&E to remit to DWR the Commission-approved DWR power charge for energy that PG&E purportedly used to meet the WAPA load.

PG&E proposes another method of dealing with this issue by considering the under-remittance issue during the 2001-2002 true-up and in the 2003 supplemental revenue requirement. Under PG&E's proposal, the under-remittance would be considered along with other reductions or offsets that might be contested during the true-up. PG&E contends that its method is consistent with the rate agreement between the Commission and DWR, which provides that DWR's overall revenue requirement be adjusted on a prospective basis to compensate for an undercollection or shortfall.

We are not persuaded that the Commission should wait for the 2001-2002 true-up or for the supplemental 2003 revenue requirement proceeding to occur before acting on the under-remittance problem. First of all, the under-remittance by PG&E has caused DWR's 2001-2002 revenue requirement to come up short by approximately $470 million, which PG&E holds but has not remitted to DWR. If the under-remittance continues in 2003, DWR expects an additional

undercollection of $238 million.[24] Second, Water Code § 80002.5 provides that the Legislature's intent is "that power acquired by the department under this division shall be sold to all retail end use customers being served by electrical corporations;" that pursuant to Water Code § 80110, DWR "shall retain title to all power sold by it to the retail end use customers;" and that DWR "shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134…." All of these Water Code sections impress upon this Commission the need to ensure that DWR recovers its entire revenue requirement, as presented to the Commission and implemented in Commission decisions, and that title to the DWR energy remain with DWR. As stated in D.02-02-052 at page 22:

> "The role of the Commission under the AB1X, however, is to establish utility charges to recover the costs of authorized DWR activities once the revenue requirement has been determined by DWR, at the time they are needed. As a result, it is proper for us to implement utility charges, as adopted in this order, to enable DWR to recover its revenue requirement as authorized under AB1X."

We also note that in DWR's 2003 Supplemental Determination, DWR is adamant that its revenue requirement reduction for 2003 cannot be effective until PG&E has paid all of the under-remittances to DWR. This fact underscores the need to clarify that DWR delivered energy to serve retail customers.

If we fail to timely act on the under-remittance issue, DWR will be unable to recover its revenue requirement as determined by DWR and for which

[24] The undercollection for 2003 is likely to be less due to the changes to the operating agreement that were adopted in D.03-04-029.

the Commission authorized recovery. (See D.02-02-052, pp. 114-115, Ordering Pars. 3 and 4; D.02-03-062, p. 38, Ordering Par.1.gg; D.02-12-045, p. 61, Ordering Pars. 1 and 2.) In addition, in the rate agreement between DWR and the Commission, we agreed "to calculate, revise and impose, from time to time, Power Charges sufficient to provide moneys in the amounts and at the times necessary to satisfy the Retail Revenue Requirements as specified by the Department." (D.02-02-051, Appendix C, Rate Agreement, § 6.1(a).) Therefore, instead of deferring the under-remittance issue to the 2001-2002 true-up and to the supplemental revenue requirement for 2003, we act today on the under-remittance amounts that PG&E has withheld from DWR.[25]

PG&E's failure to remit sums to DWR is contrary to the intent of the servicing order. Under § 2.2.(c) of the servicing order, the basis for the power charge remittances are "the amounts collected from Customers for actual DWR Power supplied…." Under § 2.3. of the servicing order, any monies received by PG&E during collection, are to be segregated and held in trust for the benefit of DWR pending their transfer to DWR. PG&E does not dispute that it received energy from DWR. PG&E's WAPA load is a wholesale obligation. PG&E's purported use of DWR energy to serve WAPA load without paying DWR for this energy unjustly enriches[26] PG&E to the detriment of DWR, as well as ratepayers

[25] This decision therefore does not address PG&E's argument that certain offsets or reductions should be examined in the true-up proceeding, which could result in an adjustment of DWR's revenue requirement.

[26] In a civil action, unjust enrichment could result in the imposition of a "constructive trust," i.e., compelling "a person who has property to which he is not justly entitled to transfer it to the person entitled thereto." (Witkin, Summary of California Law, Vol. 11, Trusts, § 305, pp. 1138-1139.) In the situation before us, the provisions of AB1X provide

Footnote continued on next page

of the other investor owned utilities, and fails to recognize that the title to this energy rightfully belongs to DWR. In order to rectify this problem, PG&E should be ordered to remit the outstanding monies to DWR as intended by AB1X.

The next concern to address is whether PG&E should remit the Commission-approved DWR power charge to DWR for the energy that was allegedly used to fulfill the WAPA load, or should a lower rate apply. DWR states in footnote 1 of its March 6, 2003 Memorandum that the "power should be treated as having been delivered to PG&E's retail customers, not to WAPA." Thus, DWR seeks an order requiring PG&E to remit the retail rate for this power. PG&E's response did not address the issue of what rate should apply to the energy that was supplied by DWR.

By using the phrase "total demand" in Attachment B of the servicing order, PG&E was able to treat the DWR energy supplied to retail customers as if it were delivered to meet PG&E's WAPA load obligation without having to remit any money for this energy. PG&E could argue that since this energy was treated as if it were delivered to fulfill PG&E's WAPA load obligation, that this was a wholesale obligation, and that no monies are owed to DWR because the energy was not sold to a retail customer. However, such an argument overlooks the fact that the energy was supplied to serve retail customers, that title to the energy belongs to DWR (Water Code § 80110), that PG&E has withheld the monies associated with this energy, and that these monies properly belong to DWR. As the Commission noted in D.01-03-081:

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the necessary authority for us to order PG&E to remit the monies to DWR that are associated with the energy that DWR supplied.

> "DWR is purchasing electricity and selling it to retail end-use customers, and it is unreasonable to allow utilities to retain the revenue generated by those transactions — transactions to which they are not a party — even though they are in financial distress." (D.01-03-081, p. 21.)

PG&E should not be allowed to use the energy that DWR supplied without compensating DWR for this energy. Since the energy was delivered by DWR for retail use, PG&E should compensate DWR at the Commission-approved DWR power charge for all of the energy supplied by DWR. Such a result is proper because DWR supplied the energy based on PG&E's forecast of total demand, which under D.02-05-048 and D.02-12-072 was treated to include the WAPA load. It is also consistent with the provisions of Water Code § 80110 that DWR shall retain title to all of the power sold by it to retail end use customers, and that DWR shall be entitled to recover the amounts necessary to recover its revenue requirement. In order to fully recover DWR's revenue requirement, the Commission should require PG&E to pay the Commission-approved DWR power charge for the DWR-supplied energy.

The under-remittance problem has resulted because of the language in prior Commission decisions, most notably in D.02-05-048 and in D.02-12-072. PG&E has been able to take advantage of these decisions by interpreting them in a manner which allowed it to treat the DWR-supplied energy to meet PG&E's WAPA load obligation, while remitting payments to DWR which excluded any remittances for this energy.

It was not our intent in those decisions that PG&E should be able to avoid payment of the Commission-approved DWR power charge for energy supplied to serve retail load as required by Water Code §§ 80104, 80110, 80112, and 80116. Since DWR energy was delivered to serve retail customers in PG&E's

service territory, DWR should have received compensation from PG&E for this energy at the authorized power charge. Accordingly, this decision clarifies and modifies D.02-05-048 and D.02-12-072 so that our intent behind those decisions can be carried out. Since those two decisions and today's clarifying decision represent a continuum of our thoughts with respect to the treatment of DWR energy, the modifications that we make today to D.02-05-048 and D.02-12-072 are to be read in conjunction with today's decision.

The following modifications shall be made to D.02-05-048 and D.02-12-072 so that the under-remittance problem can be eliminated.

In the text of D.02-05-048 at page 12 at the end of the first full paragraph, the following shall be deleted:

> "and should be included in the denominator used to establish the DWR Percentage. WAPA load should also be reflected in the numerator used to establish the amount of DWR power. Those changes have been made to section 3 of Attachment B."

The following shall replace the above deletion:

> "and DWR should receive appropriate remittances from PG&E at the retail rate for this power. In order for PG&E to meet its WAPA load, while at the same time compensating DWR for the energy supplied to serve retail customers, the term 'retail Customer demand' shall be used in section 3 of Attachment B."

In Section 3 (Allocation of DWR Power) of Attachment B of the Servicing Order, which is found in Appendix B and Appendix C of D.02-05-048, the phrase "retail Customer demand" shall replace the phrase "total demand" in the second, third, fourth, and fifth sentences.

In the text of D.02-12-072 at page 18 in the first full paragraph, the following shall be deleted:

> "Accordingly, section 3 of Attachment B has been revised to use the phrase 'total demand.' In addition, 'total demand' has been used in three places in section 3.(b) of Attachment B."

The following shall replace the above deletion:

> "At the same time, DWR should receive remittances at the retail rate for the energy supplied by DWR to serve retail load. Accordingly, section 3 of Attachment B has been revised to use the phrase 'retail Customer demand.' In

> addition, 'retail Customer demand' will be used in three places in section 3.(b) of Attachment B."

In Section 3.(a) (Prior to the Operating Order Effective Date) of Attachment B of the 2003 Servicing Order, which is found in Appendix A and Appendix B of D.02-12-072, the phrase "retail Customer demand" shall replace the phrase "total demand" in the second, third, fourth, and fifth sentences. In Section 3.(b) (Post-Transition Methodology) of Attachment B, the phrase "retail Customer demand" shall replace the phrase "total demand" in the first, third, and fourth sentences.

No modifications to D.02-12-069 are needed because the operating order was replaced by the operating agreement in D.03-04-029. For the period between the adoption of D.02-12-069 and the adoption of D.03-04-029, we note that if there is a conflict between the formulas and procedures in Exhibit C of the operating order and the formulas and procedures of PG&E's servicing order, those contained within the servicing order shall govern. As a result of the modifications we make to PG&E's servicing order, effective during the time period between the adoption of D.02-12-069 and D.03-04-029, it is unnecessary to modify the operating order applicable to PG&E.

We have also reviewed the Settlement Principles to the operating agreement, which was adopted in D.03-04-029. Due to the changes that were adopted in D.03-04-029, and PG&E's statement in its response to the March 6, 2003 Memorandum that it "does not oppose a prospective change to DWR's remittance methodology, from the one currently incorporated by the Commission into the servicing orders adopted in May, 2002 and December, 2002, to another approach that ensures that PG&E remits at a rate that compensates DWR for the amount of DWR's forecast 2003 revenue requirement allocated to

PG&E's customers," no changes to the Settlement Principles set forth in D.03-04-029 are needed. Those Settlement Principles, as adopted in D.03-04-029, recognize that the WAPA load would be treated as part of PG&E's retail load obligation for remittance purposes as determined in D.02-05-048.

In addition, the Settlement Principles now states in part that "Utility shall remit to DWR an Energy Payment for the delivery of Contract energy to Utility retail customers (including the delivery o[f] Contract energy to WAPA)…." This change to the Settlement Principles ensures that PG&E pays DWR for any energy that DWR supplies to retail customers in PG&E's service territory.

The purpose behind all of the above changes is to ensure that if DWR-supplied energy is treated as if it has been used, or is used, to meet PG&E's WAPA load obligations, that DWR receive remittances from PG&E at the Commission-approved DWR power charge for this energy. By making these changes, we are also fulfilling our responsibility under AB1X and the rate agreement of ensuring that the utilities remit DWR's revenue requirement.

DWR questions whether D.03-04-029 clearly resolves the issue of whether the WAPA load is served by URG, while SCE recommends that PG&E be directed to serve its WAPA load with URG. We clarify today that PG&E must remit to DWR amounts for all energy provided by DWR, including energy purportedly used to serve WAPA load. We also affirm that DWR delivered energy for retail use and title to that energy remains with DWR. In addition, DWR's memorandum states at page 7 that "PG&E and DWR have agreed on an interim basis to treat WAPA as a wholesale obligation and not include PG&E's WAPA obligations in the load served by energy delivered by DWR to PG&E's service territory."

No one initially raised the issue of whether PG&E should remit interest on the under-remittances. The servicing order has specific provisions that address when interest is due. (See Servicing Order, §§ 5.3. and 7.4.) It is unclear, however, whether DWR considers PG&E's under-remittance to be an "event of default" or a "delinquent payment." We shall order interest to be paid on the under-remittances by PG&E's shareholders. However, we shall leave it up to DWR and PG&E to determine the appropriate amount of interest that should be paid by PG&E's shareholders for PG&E's untimely remittances associated with the WAPA load, subject to Commission approval. If they cannot resolve the interest issue among themselves, they can submit the interest issue to us for a determination. PG&E shall file and serve a notice with the Commission regarding its efforts to resolve the WAPA interest issue within 45 days from today. A draft decision addressing the WAPA interest issue will then be issued for comment, and Commission action.

PG&E is directed to remit to DWR the Commission-approved DWR power charge for all of the energy that DWR supplied to meet PG&E's WAPA load obligations during the period from January 17, 2001 to the present. The remittance shall be made by PG&E to DWR as directed by the Commission in the decision addressing DWR's supplemental determination of its 2003 revenue requirement. In no event shall the WAPA interest issue delay PG&E's remittance to DWR of the amounts associated with the energy that DWR supplied to meet PG&E's WAPA obligations.

V. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB1X. Pursuant to Pub. Util. Code § 1731(c), any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision,

and the provisions of Pub. Util. Code § 1768 are applicable to any judicial review of this decision.

VI. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments on the draft decision were submitted by DWR, PG&E, SDG&E and SCE, and reply comments were filed by PG&E. The comments have been reviewed and considered, and appropriate changes have been made to the decision.

VII. Assignment of Proceeding

Loretta M. Lynch and Geoffrey F. Brown are the Assigned Commissioners, and John S. Wong is the assigned ALJ in this proceeding.

Findings of Fact

1. DWR's Memorandum requests the Commission to take the necessary steps to ensure that DWR receives the appropriate remittances for the DWR energy that was purportedly used to serve PG&E's load obligation with WAPA.

2. DWR's 2003 Supplemental Determination states that the amount of the under-remittance for the period from January 17, 2001 through the end of March 2003 is estimated to be at least $539 million.

3. The March 24, 2003 ALJ ruling treated DWR's Memorandum as a request to modify the servicing orders.

4. PG&E acknowledges in its response to the Memorandum and in its financial reports that it has accrued liability for the electricity provided by DWR.

5. DWR supplied energy to serve retail customers.

6. As a result of perceived ambiguities in the servicing order and operating order decisions, PG&E has been able to meet its WAPA load obligation, while

avoiding remittances to DWR for the energy delivered to serve PG&E's retail customers..

7. PG&E does not dispute that it has withheld the remittances to DWR.

8. DWR's revenue requirements were adopted and allocated to the three electric utilities in D.02-02-052 and D.02-12-045, and were based in part on projected sales of energy delivered to California retail customers.

9. As a result of PG&E's under-remittances, DWR's anticipated revenue requirements for 2001-2002 and 2003 will not be met.

10. If the under-remittances are not recovered from PG&E, the customers of SDG&E and SCE could end up paying for some or all of the energy used to fulfill PG&E's WAPA obligation.

11. Various Water Code sections enacted by AB1X provide that DWR's energy is to be provided to retail end use customers.

12. The use of "total demand" in the servicing order resulted in the inclusion of PG&E's WAPA load in the forecast of PG&E's retail end-use customer usage.

13. By supplying energy to serve retail customers in PG&E's service territory, DWR should have been paid for the energy based on the Commission-approved DWR power charge.

14. Due to the conflict between the formulas in Section 3 of Attachment B of the servicing order and the Settlement Principles of the operating order, PG&E interpreted the clause at page C-7 of the Settlement Principles to mean that the remittance formula in the servicing order should govern.

15. DWR states in its 2003 Supplemental Determination that the proposed revenue requirement reduction cannot be effective until PG&E has paid all of the under-remittances to DWR.

16. PG&E's interpretation of the decisions has allowed it to treat DWR energy as if it were supplied to meet PG&E's WAPA load obligation, while remitting payments to DWR which excluded any remittances for this energy.

17. The modifications that we make today to D.02-05-048 and D.02-12-072 are to be read in conjunction with today's decision.

18. No changes to the Settlement Principles set forth in D.03-04-029 are needed.

19. The Settlement Principles, as adopted in D.03-04-029, recognize that the WAPA load would be treated as part of PG&E's retail load obligation for remittance purposes as determined in D.02-05-048, and that PG&E shall pay DWR for any energy that DWR supplies to retail customers in PG&E's service territory.

20. Although the servicing order has specific provisions that address when interest is due, no one initially raised the issue of whether PG&E should remit interest on the under-remittances, and it is unclear whether DWR considers PG&E's under-remittance to be an "event of default" or a "delinquent payment."

21. If PG&E and DWR cannot resolve the interest issue, they can submit the interest issue to us for resolution.

Conclusions of Law

1. If the under-remittances are not paid by PG&E, we would not be fulfilling our statutory duty of ensuring that DWR recovers its revenue requirement under Water Code § 80110, so that DWR can satisfy the requirements of Water Code § 80134.

2. PG&E's treatment of DWR-supplied energy to meet its WAPA load obligation without remitting monies to DWR for that energy, is contrary to what

we intended when we allocated DWR's revenue requirements to the three electric utilities.

3. As a result of PG&E's interpretation of the remittance formula of the servicing order to exclude the WAPA load because of PG&E's view that it is a non-retail load, PG&E has withheld from DWR the remittances attributable to the energy used to meet PG&E's WAPA load obligations.

4. The changes to the operating agreement in D.03-04-029 address the under-remittance problem on a going-forward basis.

5. The various Water Code sections impress upon this Commission the need to ensure that DWR recovers its entire revenue requirement, as presented to the Commission and implemented in decisions, and that title to the DWR energy remain with DWR.

6. Instead of deferring the under-remittance issue to the 2001-2002 true-up and to the supplemental revenue requirement for 2003, the under-remittance problem should be acted upon today.

7. Even though the WAPA load is a wholesale obligation of PG&E, PG&E's treatment of the energy to avoid paying DWR for this energy unjustly enriches PG&E to the detriment of DWR, and fails to recognize that the title to this energy rightfully belongs to DWR.

8. PG&E should not be allowed to avoid appropriate remittances to DWR for energy that DWR supplied.

9. Since the energy was delivered by DWR for retail use, PG&E should compensate DWR at the Commission-approved DWR power charge for all of the energy supplied by DWR.

10. Since DWR energy was delivered to serve retail customers in PG&E's service territory, DWR should have received compensation from PG&E for this energy at the authorized power charge.

11. The modifications discussed in today's decision should be made to D.02-05-048 and D.02-12-072 so that the intent behind those decisions can be carried out and the under-remittance problem eliminated.

12. No modifications to D.02-12-069 are needed because the operating order was replaced by the operating agreement in D.03-04-029, and the changes adopted herein to PG&E's servicing orders control in the event of a conflict with D.02-12-069.

13. PG&E's shareholders should be ordered to pay interest on the WAPA under-remittance.

14. PG&E and DWR should determine the appropriate amount of interest to be paid, and submit their determination to the Commission for approval.

15. PG&E should be directed to remit to DWR, as directed by the Commission in the decision regarding DWR's supplemental determination of its 2003 revenue requirement, the Commission-approved DWR power charge for all of the energy that DWR supplied to serve retail customers but purportedly used to meet PG&E's WAPA load obligations during the period from January 17, 2001 to the present.

16. This decision construes, applies, implements, and interprets the provisions of AB1X.

17. Any application for rehearing of this decision must be filed within 10 days of the date of issuance of this decision.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is directed to remit to the California Department of Water Resources (DWR) the Commission-approved power charge for all of the energy that DWR supplied to meet PG&E's retail load but which was purportedly used to serve load obligations with the Western Area Power Administration (WAPA) for the period from January 17, 2001 to the present.

    a. PG&E shall remit the monies to DWR as directed by the Commission in its decision regarding DWR's supplemental determination of its 2003 revenue requirement.

2. PG&E is directed to have its shareholders pay interest on the remittance ordered in the preceding ordering paragraph.

    a. PG&E is directed to discuss the interest issue with DWR to determine the appropriate amount of interest that should be paid by PG&E's shareholders.

    b. PG&E shall file and serve a notice with the Commission regarding its efforts to resolve the WAPA interest issue within 45 days from today.

    c. After receiving the notice, a draft decision shall be prepared for the Commission's action determining the appropriate amount of interest to be paid.

3. DWR's request to modify certain Commission decisions is granted as follows:

    a. In the text of Decision (D.) 02-05-048 at page 12 at the end of the first full paragraph, the following shall be deleted:

> "and should be included in the denominator used to establish the DWR Percentage. WAPA load should also be reflected in the numerator used to establish the amount of DWR power. Those changes have been made to Section 3 of Attachment B."

The following text shall replace the above deletion:

"and DWR should receive appropriate remittances from PG&E at the retail rate for this power. In order for PG&E to meet its WAPA load, while at the same time compensating DWR for the energy supplied to serve retail customers, the term 'retail Customer demand' shall be used in Section 3 of Attachment B."

b. In Section 3 (Allocation of DWR Power) of Attachment B of the Servicing Order, which is found in Appendix B and Appendix C of D.02-05-048, the phrase "retail Customer demand" shall replace the phrase "total demand" in the second, third, fourth, and fifth sentences.

c. In the text of D.02-12-072 at page 18 in the first full paragraph, the following shall be deleted:

"Accordingly, Section 3 of Attachment B has been revised to use the phrase 'total demand.' In addition, 'total demand' has been used in three places in section 3.(b) of Attachment B."

The following text shall replace the above deletion:

"At the same time, DWR should receive remittances at the retail rate for the energy supplied by DWR to serve retail load. Accordingly, section 3 of Attachment B has been revised to use the phrase 'retail Customer demand.' In addition, 'retail Customer demand' will be used in three places in section 3.(b) of Attachment B."

d. In Section 3.(a) (Prior to the Operating Order Effective Date) of Attachment B of the 2003 Servicing Order, which is found in Appendix A and Appendix B of D.02-12-072, the phrase "retail Customer demand" shall replace the phrase "total demand" in the second, third, fourth, and fifth sentences. In Section 3.(b) (Post-Transition Methodology) of Attachment B, the phrase "retail Customer demand" shall replace the phrase "total demand" in the first, third, and fourth sentences.

This order is effective today.

Dated September 4, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners